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Attorneys for the United States of America

FILED
08 JUL 15 PM 4:03
RICHARD W. WIEKING
U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
E-filing

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RS

UNITED STATES OF AMERICA,

CV 08

3413

Plaintiff,

v.

COMPLAINT

JOHN & NANCY BENNETTS; JOHN F.
BENNETTS; THE CALIFORNIA
FRANCHISE TAX BOARD
BOARD; and BANK OF AMERICA,

SAN JOSE VENUE

Defendant.

Now comes the United States of America, by and through its undersigned counsel, and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This is a civil action brought by the United States to reduce to judgment outstanding federal tax assessments against defendants John and Nancy Bennetts and to foreclose federal tax liens upon real property.

2. This action is commenced pursuant to Sections 7401, 7402 and 7403(a) of the Internal Revenue Code of 1986, at the direction of the Attorney General of the United States, with the authorization and sanction and at the request of the Office of Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury.

1 3. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1340
2 and 1345, and under 26 U.S. C. § 7402(a) of the Internal Revenue Code of 1986.

3 4. Venue is proper in the Northern District of California because defendant
4 taxpayers, John and Nancy Bennetts, reside at and the subject property is located within this
5 judicial district. 28 U.S.C. §§ 1391 and 1396.

6
7 **II. IDENTIFICATION OF DEFENDANTS**

8 5. Defendant John F. Bennetts currently resides at 25880 Rancho Alto, Carmel
9 Valley, California, which is within the jurisdiction of this Court.

10 6. Defendant Nancy Bennetts currently resides at 25880 Rancho Alto, Carmel
11 Valley, California, which is within the jurisdiction of this Court.

12 7. California Franchise Tax Board is made a party pursuant to 26 U.S.C. § 7403(b)
13 in that it may claim an interest in the property that the United States seeks to foreclose.

14 8. Bank of America is made a party pursuant to 26 U.S.C. § 7403(b) in that it may
15 claim an interest in the property that the United States seeks to foreclose.

16
17 **III. IDENTIFICATION OF PROPERTY SOUGHT TO BE FORECLOSED**

18 9. The property which is the subject of this suit is real property located at 25880
19 Rancho Alto, Carmel Valley, California, (hereinafter referred to as the "Subject Property"), and
20 described in the Official Records in the Office of the County Recorder, County of Monterey,
21 California, as follows:

22 Lot 17, Block 3, Tract No. 423 Rancho Tierra Grande Subdivision No. 1, filed January 8,
23 1963 in the office of the County Recorder of the County of Monterey, State of California,
24 in Map Book 7, Cities and Towns.

COUNT I**REDUCE ASSESSMENTS TO JUDGMENT**

10. The United States reincorporates the allegations in paragraphs 1 through 9 above, as if fully set forth herein.

11. A delegate of the Secretary of the Treasury made assessments against defendants John and Nancy Bennetts for unpaid federal income taxes (Form 1040), penalties and interest for the 1991, 1992, 1993, 1998, 1999, 2000, 2002, 2003, and 2004 tax years as set forth below:

TAX YEAR/ TYPE OF TAX	DATE OF ASSESSMENT	BALANCE OF TAX INTEREST, FEES & PENALTIES AS OF March 31, 2008	NOTICE OF LIEN FILED IN MONTEREY COUNTY
1991/Income	2/20/1995	\$180,707.70	3/21/2008
1992/Income	2/13/1995	\$205,669.04	3/21/2008
1993/Income	2/13/1995	\$126,767.60	3/21/2008
1998/Income	11/22/1999	\$136,262.63	12/15/1999
1999/Income	10/09/2000	\$98,554.13	05/11/2000
2000/Income	11/18/2002	\$16,532.95	12/15/1999
2002/Income	11/24/2003	\$55,519.34	10/29/2004
2003/Income	08/15/2005	\$100,269.69	11/21/2005
2004/Income	08/08/2005	\$167,271.68	11/16/2005

12. Despite timely notice and demand for payment of the taxes, penalties, and interest described in paragraph 11, defendants John and Nancy Bennetts have neglected, failed, or refused to pay the taxes, penalties and interest described in paragraph 11, and there remains due and owing on said assessments, as of March 31, 2008 the sum of \$1,087,554.76, plus accrued interest and penalties and other statutory additions as provided by law, minus any credits.

13. A delegate of the Secretary of the Treasury made assessments against defendant John F. Bennetts for unpaid unemployment (Form 940) and employment (Form 941) taxes pursuant to 26 U.S.C. § 6672, penalties and interest for the quarters ended 12/31/2000, 6/30/2001, 9/30/2001, 12/31/2001, 3/31/2006, and years 1993, and 2005, and a Civil Penalty as

set forth below:

TAX YEAR/ TYPE OF TAX	DATE OF ASSESSMENT	BALANCE OF TAX INTEREST, FEES & PENALTIES AS OF March 31, 2008	NOTICE OF LIEN FILED IN MONTEREY COUNTY
2000/(941)	10/1/2001	\$2,090.27	10/25/2004
2001/(941)	9/3/2001	\$2,524.04	10/25/2004
2001/(941)	12/17/2001	\$11,244.58	10/25/2004
2001/(941)	3/18/2002	\$1,203.00	10/25/2004
2006/(941)	5/29/2006	\$13,413.75	requested
2005/(940)	1/1/2007	\$336.91	5/30/2007
1993/Civil Pen	6/17/1996	\$11,350.50	10/25/2004

14. Despite timely notice and demand for payment described in paragraph 13, defendant John F. Bennetts has neglected, failed, or refused to pay the amounts due in paragraph 13, and there remains due and owing on said assessments, as of March 31, 2008 the sum of \$42,163.05, plus accrued interest and penalties and other statutory additions as provided by law, minus any credits.

15. The unpaid taxes described in paragraphs 12 and 14 amount to \$1,129,717.81, which constitutes the total amount owed by John F. Bennetts and Nancy Bennetts to the federal government as of March 31, 2008.

COUNT II

FORECLOSE FEDERAL TAX LIENS

16. The United States reincorporates the allegations in paragraphs 1 through 15 above, as if fully set forth herein.

17. Pursuant to 26 U.S.C. §§ 6321 and 6322, liens arose in favor of the plaintiff, United States of America, upon all property and rights to property, whether real or personal, belonging to defendants John and Nancy Bennetts, as of the dates of the assessments described in paragraphs 11, 13, 14, 15, or acquired thereafter.

18. A Delegate of the Secretary of the Treasury filed Notices of Federal Tax Lien against defendants John and Nancy Bennetts, with the Monterey County Recorder in Salinas,

1 California, on March 31, 2008, for the 1991, 1992, and 1993 tax years; on December 15, 1999,
2 for the 1998 and 2000 tax years; on May 11, 2000 for the 1999 tax year; on October 29, 2004,
3 for the 2002 tax year; on November 21, 2005 for the 2003 tax year, and on November 16, 2005
4 for the 2004 tax year.

5 19. A Delegate of the Secretary of the Treasury filed Notices of Federal Tax Lien
6 against defendant John F. Bennetts, with the Monterey County Recorder in Salinas, California,
7 on October 25, 2004, for the 1993, 2000, and 2001 tax years; on May 30, 2007, for the 2005 tax
8 year, and a notice has been requested for the 2006 tax year.

9 20. The property described in paragraph 9 has at all pertinent times been property
10 belonging to defendants John and Nancy Bennetts, and only to them, for purposes of the tax lien
11 provisions of the Internal Revenue Code. Accordingly, the federal tax liens at issue in
12 paragraphs 11, 13, 18, and 19 attached to the property when the liens arose, and the tax liens have
13 continued to the present and without interruption to attach to such property.

14 **WHEREFORE**, the plaintiff, United States of America, prays for the following relief:

15 1. That this Court determine and adjudge that defendants John and Nancy Bennetts
16 are together personally liable to the United States for the sum of \$1,087,554.76, plus interest and
17 statutory additions, as provided by law, that have accrued, and continue to accrue, since March
18 31, 2008; that a judgment in that amount be entered against defendants John and Nancy Bennetts
19 and in favor of the United States of America;

20 2. That this Court determine and adjudge that defendant John F. Bennetts is
21 personally liable to the United States for the sum of \$42,163.05, plus interest and statutory
22 additions, as provided by law, that have accrued, and continue to accrue, since March 31, 2008;
23 that a judgment in that amount be entered against defendant John F. Bennetts and in favor of the
24 United States of America;

25 3. That this Court determine and adjudge that the United States has liens for unpaid
26 federal taxes against defendants John and Nancy Bennetts, and against the real property described
27 in paragraph 9, which property is the subject of this suit, for the sum of \$1,129,717.81, plus
28 interest and statutory additions, as provided by law, that have accrued, and continue to accrue,

1 since March 31, 2008;

2 4. That the tax liens of the United States be foreclosed, and that this Court order the
3 sale of the real property described in paragraph 9;

4 5. That, if the amounts distributed to the United States pursuant to the sale of the real
5 property are insufficient to satisfy fully the above-described tax liabilities, the United States have
6 judgment for the deficiency against defendants John and Nancy Bennetts;

7 6. That the United States be granted its costs and attorneys' fees; and

8 7. For such other and further relief as is just and proper.

9 Respectfully submitted,

10 JOSEPH P. RUSSOINIELLO
11 United States Attorney

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13 CYNTHIA L. STIER
14 Assistant United States Attorney
15 Tax Division
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JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

JOHN BENNETTS, et al.

**(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)****(c) Attorney's (Firm Name, Address, and Telephone Number)**

CYNTHIA L. STIER, AUSA, TAX DIVISION
450 Golden Gate Ave., 9th Floor, Box 36055
San Francisco, CA 94102
(415) 436-7000

**County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)**

MONTEREY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

C08-3413 RS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWS/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

Reduce to Judgment Federal Tax Assessments & Foreclose Tax Liens

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

 CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No
VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)**☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

7/14/08

SIGNATURE OF ATTORNEY OF RECORD

CYNTHIA L. STIER, AUSA, TAX DIVISION